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VERITY, INC., and THE VERITY INC.

CHANGE IN CONTROL AND

SEVERANCE BENEFIT PLAN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

E-FILING

HUGO SLUIMER,

Plaintiff,

v.

VERITY, INC., a corporation, and THE
VERITY INC. CHANGE IN CONTROL AND
SEVERANCE BENEFIT PLAN,

Defendants.

)
) **CASE NO. C 081220 SI**

) **JOINT ADMINISTRATIVE MOTION**
) **FOR CLARIFICATION OR IN THE**
) **ALTERNATIVE JOINT STIPULATION**
) **TO EXTEND THE TIME FOR FILING**
) **A MOTION FOR ATTORNEY'S FEES**
) **AND PROPOSED ORDER**

I. INTRODUCTION

Upon review of the Court's July 22, 2008 Order on the cross-motions for summary judgment and the subsequent July 25, 2008 Minute Order, a question has come up as to whether or not the Court meant to preserve plaintiff's claim for statutory penalties for further litigation. Plaintiff contacted defendant in order to meet and confer on a motion for attorney fees, and defendant's counsel stated he believed such a motion was premature, as the claim for statutory penalties was still active. Consequently, and pursuant to Local Rule 7-11, the parties move for clarification of the status of Plaintiff's claim for statutory penalties in the wake of the Court's orders. The parties also stipulate to extend the time for plaintiff to file a motion for attorney's fees pursuant to Local Rules 54-6 and 6-2 so this question can be resolved, and request that the Court confirm the stipulation by signing the proposed order, below.

II. FACTS

On July 22, 2008, the Court issued an Order granting plaintiff's motion for summary judgment in part and denying defendant's motion to dismiss and motion for summary judgment. Relevant to the question at issue here, the Order stated:

Plaintiff also moves for summary judgment on the question whether defendant should be subject to statutory penalties for failure to furnish documents requested by plaintiff. *See* 29 U.S.C. §§ 1022(a), 1024(b)(4) & 1132(c)(1). The Court finds that plaintiff has not, at this time, met his burden of showing that documents that were statutorily-required to be produced were not in fact produced. Plaintiff's motion for summary judgment on this ground is DENIED.

(Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion to Dismiss and Motion for Summary Judgment, 16:17-21 (July 22, 2008)).

On July 25, 2008, the Court issued a Minute Order which stated that plaintiff's motion for summary judgment had been granted and "no further dates set in this case." (*Minute Order*, 1 (July 25, 2008)).

On July 29, 2008, plaintiff's counsel wrote to defendants' counsel to meet and confer regarding plaintiff's intended motion for fees, costs and interest under 29 U.S.C. § 1132(g), as required by Local Rule 54-6. That same day, defendants' counsel responded: "The case is still active regarding your request for statutory penalties. On what basis do you believe your motion is ripe.

1 Please advise. Thanks.”

2 On July 30, 2008, plaintiff’s counsel responded and agreed that there appears to be some
3 ambiguity between the July 22, 2008 Order and the July 25, 2008 minute Order as to whether the
4 statutory penalties claim remains to be litigated. Plaintiff’s counsel requested that the parties file this
5 *Joint Motion for Clarification and Joint Stipulation to Extend the Time to File a Motion for*
6 *Attorney’s Fees* to ensure that plaintiff did not waive his right to file a motion for attorney’s fees.
7 That same day, defendants’ counsel agreed to the filing of this joint motion.

8 An additional factor weighing on the requested extension is that two of plaintiff’s counsel
9 have vacation plans for the weeks of July 28, 2008 and August 4, 2008.

10 **III. RELIEF REQUESTED**

11 The parties request that the Court clarify whether it contemplates further litigation or briefing
12 on plaintiff’s statutory penalties claim. The parties stipulate that, if the Court determines no further
13 litigation or briefing is necessary, that plaintiff’s time to file his motion for attorney’s fees, costs and
14 interest be extended through and including August 22, 2008.

15 Good cause exists for this brief extension because of the parties confusion in the wake of July
16 22, 2008 Order and the July 25, 2008 Minute Order, and because of the preplanned vacation
17 schedules of plaintiff’s counsel.

18 SO STIPULATED:

19 Respectfully submitted,

20 RIMAC & MARTIN, P.C.

21 DATED: July 31, 2008

22 By: /s/ WILLIAM REILLY
23 WILLIAM REILLY
Attorneys for Plaintiff

24 DOLL AMIR & ELEY LLP

25 DATED: July 31, 2008

26 By: /s/ GREGORY L. DOLL
27 GREGORY L. DOLL
Attorneys for Defendants
28 VERITY, INC., and THE VERITY INC.
CHANGE IN CONTROL AND
SEVERANCE BENEFIT PLAN

1 The time for plaintiff to file a motion for attorney fees is extended through August 22,
2 2008.

3
4 SO ORDERED:

5
6
7 DATED: _____, 2008

THE HONORABLE SUSAN ILLSTON